

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the
Commission's Future Energy Efficiency Policies,
Administration and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
THE NATURAL RESOURCES DEFENSE COUNCIL'S AND
THE UTILITY REFORM NETWORK'S
NOTICES OF INTENT TO CLAIM COMPENSATION**

I. Summary

This ruling responds to the notices of intent (NOIs) filed by the Natural Resources Defense Council (NRDC) on October 4, 2001, and by The Utility Reform Network (TURN) on October 10, 2001. This ruling addresses the requirements of the Pub. Util. Code § 1804.¹ In consultation with the assigned Commissioner, I find that NRDC and TURN are eligible for compensation in this proceeding. No party opposed such a finding. However, a finding of eligibility for compensation does not guarantee an award of compensation. NRDC and TURN should see to it that they do not duplicate other parties' efforts by taking the same approach to the same issues. Duplication may result in a reduction in the amount of compensation ultimately awarded.

¹ All statutory references are to the Pub. Util. Code.

II. NOI Requirements

A. Timely Filing

Under § 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the Prehearing Conference (PHC) is held, file and serve on all parties to the proceeding a notice of intent to claim compensation.”

The first PHC in this proceeding occurred on September 10, 2001. Both NRDC and TURN filed their NOIs within 30 days of that date – NRDC on October 4 and TURN on October 10, 2001 - so both NOIs were timely filed.

B. Customer Status

Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b), and whether the intervenor is 1) a participant representing consumers, 2) a representative authorized by a customer, or 3) a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.²

1. NRDC

NRDC meets the third definition of customer, as set forth in

² “When filing its Notice of Intent, a participant should state how it meets the definition of customer: as a *participant* representing consumers, as a *representative* authorized by a customer, or as a representative of a *group or organization* that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers.” D. 98-04-059, *mimeo.*, at 28-29 (emphasis in original).

§ 1802(b).³ NRDC is organized to represent and advocate the environmental interests of its members. NRDC qualifies as a customer because it is an organization that is authorized by its articles of incorporation to represent the interests of its members, a portion of whom we have determined to be residential customers.

While the Commission's Office of Ratepayer Advocates (ORA) represents and must balance the interests of all ratepayers, NRDC states that it represents the specific interests of customers who highly prioritize the need to preserve environmental quality while minimizing the societal costs of providing electric service through energy efficiency, renewable resources and other cost-effective alternative energy resources. Therefore, NRDC contends it represents customers with a concern for the environment that distinguishes their interests from the interests represented by other consumer advocates who have intervened in this case.

2. TURN

TURN also meets the third definition of customer, as set forth in § 1802(b): it is a group or organization that is authorized by its bylaws or articles of

³ NRDC provided the relevant portions of its articles of incorporation with its NOI. Although NRDC's articles of incorporation do not specifically refer to residential customers, its articles of incorporation authorize it to represent its members' interests in regulatory and judicial proceedings within the scope of NRDC's activities, which are as follows: "To preserve, protect and defend natural resources, wildlife and environment against encroachment, misuse and destruction." *Notice of Intent to Seek Compensation of the Natural Resources Defense Council*, Attachments 1 and 2. According to NRDC, "over 95,000 of [its] members live and purchase utility services in California . . . and it is certain that at least 40,000 of these members are residential customers of Pacific Gas and Electric Company, Southern California Edison Company, and of San Diego Gas and Electric Company." *Id.* at 4.

incorporation to represent the interests of residential ratepayers.⁴ TURN is organized to represent and advocate the interests of consumers of public utility services in California. TURN qualifies as a customer because it is an organization authorized by its articles of incorporation to represent the interests of consumers, a portion of which are residential customers.

C. Significant Financial Hardship

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Section 1802(g) defines “significant financial hardship”:

“Significant financial hardship” means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. Alternatively, the customer may make the required showing in the request for an award of compensation.

⁴ D.98-04-059 directed intervenors either to file their articles of incorporation/bylaws with the NOI, or to provide a reference to a previous filing. D. 98-04-059, *mimeo.*, at 30. TURN chose the latter alternative, referring to articles of incorporation it filed with its NOI in Application (A.) 98-02-017 and A.99-12-024. TURN has approximately 30,000 dues paying members, the majority of whom it believes to be residential ratepayers. TURN does not poll its members to determine whether they are residents or small businesses, so no percentage split is available as required by D.98-04-059, Finding of Fact 12.

1. NRDC

The economic interests of NRDC's individual members are small in comparison to the costs of its effective participation in this proceeding. While some of NRDC's California members may ultimately experience lower electricity bills because of NRDC's participation in this proceeding, the economic interest represented by such savings is small in comparison to the expenses incurred by the organization to present its views in this proceeding.

For example, an average residential NRDC member's annual electricity bill is likely to be in the vicinity of one thousand dollars a year and savings from energy efficiency programs would be substantially less than this amount. This sum is far exceeded by the estimated cost of NRDC's participation in this case of \$113,250.

2. TURN

A rebuttable presumption of eligibility also exists for TURN. On December 29, 2000, Administrative Law Judge (ALJ) Robert Barnett issued a written ruling in A.00-09-002 finding that TURN had made a showing of significant financial hardship, had met the requirements of Section 1804(a), and was eligible for compensation in that proceeding. Because this proceeding commenced on August 23, 2001, within one year of ALJ Barnett's December 29, 2000 ruling, a rebuttable presumption exists that TURN is eligible for compensation in this proceeding.⁵ No party has attempted to rebut that presumption. If any party attempts to rebut this presumption, TURN is granted

⁵ § 1804 (b)(1).

leave to furnish evidence of its significant financial hardship within 10 days of the rebuttal's filing.

D. Nature and Extent of Planned Participation

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted.

1. NRDC

NRDC expects to participate actively in all phases of this proceeding, including the approval of 2002 programs, the review and assessment of programs implemented in prior years, the determination of the future administration of programs, the process for program design and implementation, and the development of the policies and regulations that will guide energy efficiency program administration, design and implementation going forward. NRDC intends to attend meetings, workshops and proceedings before the Commission, submit written comments and briefs, and participate in evidentiary hearings as appropriate. NRDC states that to the extent possible, it will coordinate its participation with other parties to avoid duplication.

2. TURN

TURN also meets the requirement that it spell out its planned participation. It states that it intends to participate in all aspects of this proceeding, including the design of programs for 2002, a review of program performance since 1998, the determination of future program administration, and the development of policies and regulations for future programs. It intends to file testimony, conduct discovery, participate in workshops and hearings, and file relevant pleadings. TURN intends to coordinate, as much as possible, with the ORA in order to avoid unnecessary duplication of effort.

E. Itemized Estimate of Compensation

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive.

1. NRDC

NRDC estimates a total projected budget of \$113,250 for this case, based on proposed hourly rates that NRDC will address in its request for compensation.

The estimate breaks down as follows:

Amount	Description
Fees	
\$67,500	450 hours of scientist time by Peter Miller at \$150/hour
\$6,750	50 hours of scientist time by Sheryl Carter at \$135/hour
\$18,000	150 hours of scientist time by Noah Horowitz at \$120/hour
\$10,000	40 hours of attorney time by Ralph Cavanagh at \$250/hour
\$6,000	30 hours of attorney time by Jeanne Sole at \$200/hour
Costs	
\$5,000	Miscellaneous costs
\$113,250	Total

NRDC satisfactorily presents an itemized estimate of the compensation it expects to request. However, the number of hours and the hourly rates may be excessive. As must any intervenor, NRDC must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

2. TURN

TURN estimates a total projected budget of \$113,000 for this case, based on proposed hourly rates that TURN will address in its request for compensation.

The estimate breaks down as follows:

Amount	Description
Fees	
\$40,000	200 hours of attorney time by Randy Wu at \$200/hour
\$24,000	120 hours of attorney time by Matthew Freedman at \$200/hour
\$10,000	Consultant JBS Energy
\$10,000	Consultant Cynthia Mitchell
\$25,000	Other consulting expenses
Costs	
\$4,000	Miscellaneous costs
\$113,000	Total

TURN satisfactorily presents an itemized estimate of the compensation it expects to request, although we will require far more specificity in its consultant costs when TURN ultimately seeks compensation. Moreover, the number of hours and the hourly rates may be excessive. As must any intervenor, TURN must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates.

IT IS RULED that:

1. The Natural Resources Defense Council (NRDC) has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish significant financial hardship, and NRDC is found eligible for compensation in this proceeding.
2. The Utility Reform Network (TURN) has met the eligibility requirements of Pub. Util. Code § 1804(a), including the requirement that it establish

significant financial hardship, and TURN is found eligible for compensation in this proceeding.

3. NRDC is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.

4. TURN is a customer as that term is defined in § 1802(b) and is a group or organization that is authorized to represent the interests of residential ratepayers.

5. A finding of eligibility in no way assures compensation.

6. NRDC and TURN shall make every effort to reduce duplication of contribution.

Dated November 1, 2001, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling The Natural Resources Defense Council's and The Utility Reform Network's Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated November 1, 2001, at San Francisco, California.

/s/ JEANNIE CHANG
Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

